IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 4100 /2003

PETITIONER

ARVIND TIWARI ALIAS RAVI TIWARI SON OF SHRI DINESH TIWARI, AGED ABOUT 22 YEARS RESIDENT OF VILLAGE SANTRA, P.S. PAATAN, DISTRICT DURG **(PRESENTLY RESIDED AT RAIPUR NAKA, P.S. CITY KOTWALI, TAH AND DISTT. DURG (CHHATTISGARH)**

P.R. No. 3906/03 Rahul Mishra 16/12/03

VERSUS

RESPONDENTS

1. STATE OF CHHATTISGARH, THROUGH THE SECRETARY, DEPARTMENT OF HOME AFFAIRS, D.K.S. BHAWAN, MANTRALAY, RAIPUR (CHHATTISGARH).

2. THE DISTRICT COLLECTOR, DISTT. DURG (CHHATTISGARH).

3. SENIOR SUPERINTENDENT OF POLICE, DISTT. DURG (C.G.(

Abd/Adv

RECEIVED COPY 16/12/03 Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.4100 of 2003

Arvind Tiwari alias Ravi Tiwari

Versus

State of Chhattisgarh and two others

POST FOR ORDER ON 19TH FEBRUARY, 2004

Sd/-
L.C. Bhadoo
Judge

17.02.2004

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.4100 of 2003

Arvind Tiwari alias Ravi Tiwari

Versus

State of Chhattisgarh and two others

Present: -

Mr. Sushil Dubey, Advocate: For the petitioner.

Mr. Ranbir Singh Marhas, Govt. Advocate: For the State/respondents.

Before: Hon'ble Shri L.C. Bhadoo, J

O R D E R

(Passed on 19th February, 2004)

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, whereby he has challenged the externment order dated 06.11.2003 (Annexure P-1) passed by the District Magistrate, Durg, and also the order dated 24.11.2003 (Annexure P-2) passed by the Principal Secretary (Home), rejecting the appeal of the petitioner filed against the order of the District Magistrate dated 06.11.2003.

2. Brief facts leading to filing of this writ petition are that the Superintendent of Police, Durg, filed a complaint before the District Magistrate, Durg, against the petitioner under the Chhattisgarh State Security Act, 1990 (hereinafter referred to as 'the Act'), for externment of the petitioner on the grounds that he is a criminal by nature; in the year 1995 he started committing crimes after coming into contact with criminals; there is no control of his family members over him; he along with his mother is regularly indulging in theft, beating, hooliganism and threatening the persons with dire

consequences; by show of force and dangerous weapons like knife, he is extorting money from the people in order to fulfill his lust; and the people are so terrified of him that is why they are not coming forward to lodge report in the Police Station and also to give evidence in the Court, therefore, on account of the activities of Arvind Tiwari alias Ravi Tiwari there is danger to person and property. In this complaint, list of cases registered and challaned against the petitioner were mentioned which are extracted in para 5.5 of the writ petition. Upon receiving this complaint, the District Magistrate, after conducting the preliminary enquiry and satisfying himself with the allegations made in the complaint, issued show cause notice to the petitioner on 13.10.2003. Reply of the same was filed by the petitioner and in his defence he examined himself and Kum. Sharda Sharma. However, written submissions and documents were not furnished by the petitioner.

3. The learned District Magistrate after considering the reply of the petitioner, prosecution evidence and placing reliance on the evidence of Khemraj Chandrakar, Shiv Kumar Yadav, Ashish Kumar, Shiv Kumar Soni, Deokumar Janghel & M.R. Kashyap and the past conduct of the petitioner in the criminal cases filed against him, reached the conclusion that the alleged allegations against the petitioner are true and on account of the behaviour and conduct of the petitioner the general public is terrified, no body is coming forward to give evidence against the petitioner and on account of the terror of the petitioner people are forced to enter into compromise in criminal cases and thereby he gets the acquittal order. Therefore, on account of the activities of the petitioner, peaceful living of the general public is distributed and there is reasonable apprehension of danger to the life and property of the general public. In the circumstances, in order to ensure the security of the public property and to maintain peace, tranquility and public order, the externment of the petitioner is essential. Ultimately, the learned District Magistrate exercising the

power under Section 5 (a) & (b) of the Act, passed the order of externment of the petitioner for one year from the revenue districts of Durg, Rajnandgaon, Raipur, Kawardha, Dhamtari, Bilaspur and Kanker. Against this order, the petitioner preferred an appeal under Section 9 of the Act before the Principal Secretary (Home). After hearing the counsel for the petitioner, the Principal Secretary (Home) confirmed the order of the District Magistrate vide his order dated 24.11.2003 and dismissed the appeal of the petitioner.

4. I have heard Mr. Sushil Dubey, counsel for the petitioner and Mr. Ranbir Singh Marhas, Govt. Advocate for the State/respondents on admission.

5. Learned counsel for the petitioner argued that in most of the cases, the petitioner has been acquitted and he was falsely implicated in all these cases. Moreover, these cases are very old, the petitioner is a peace loving person, and the impugned orders have been passed against the petitioner without following the procedure as established under the law and without affording reasonable opportunity to the petitioner. Therefore, the impugned orders are liable to be quashed. In support of his argument, he placed reliance on the decisions of Madhya Pradesh High Court reported in **1994 (1) VIBHA 168 (Ayubkhan vs. State of M.P. and another)** and **2000 (1) M.P.L.J. 348 (Nyaju @ Niyaj Mohammed s/o Gullu Kha vs. State of M.P.)**.

6. On the other hand, the learned Govt. Advocate submitted that reasonable opportunity was given to the petitioner and the learned Collector after examining six witnesses and based on the criminal record, reached the conclusion that the allegations against the petitioner are established and case under Section 5 (a) & (b) of the Act was made out, that is why show cause notice was issued to the petitioner; reply of the same was filed by the petitioner and in defence

he examined himself and one witness namely, Kum. Sharda Sharma. After considering the reply, material of the prosecution and the evidence of the petitioner, the learned District Magistrate reached the conclusion that case under Section 5 (a) & (b) of the Act is established, that is why he passed the impugned order. In this case, principles of natural justice have not been violated and the petitioner was given reasonable opportunity to defend his case. Even at appeal stage, counsel for the petitioner argued the matter before the appellate authority.

7. Now coming to the judgments cited by the counsel for the petitioner, in the case of **Ayubkhan** (*supra*), the Division Bench of M.P. High Court on facts held that the externment order was passed in February, 1993, after 18 months; the cases on which the prosecution wanted the externment of the petitioner were relating to 1979 to 1991; and during 18 months no case was reported against the petitioner regarding his involvement in any of the crime or incident adversely affecting the public order. Therefore, the Court reached the conclusion that it cannot be said that because of the presence of the person the life of the persons of the locality will be in danger or there will be disturbance of public order. Even the evidence by the non-applicant in his defence was not considered by the authority. Therefore, the Court reached the conclusion that the grounds for externment of the petitioner were not existing. In the case of **Nyaju @ Niyaj Mohammed** (*supra*) the Court reached the conclusion that the petitioner was not allowed to adduce his evidence and the prayer was rejected. The Court further reached the conclusion that it amounts to denial of the procedure established by law as contemplated under Article 21 of the Constitution.

8. In the light of the above principles, if we look into the facts of the present case and the evidence of witnesses examined by the District

Magistrate during the enquiry, Khemraj Chandrakar has specifically stated that in the year 1995, the petitioner along with his mother entered into a house and committed theft of Rs.900/-. Shiv Kumar Yadav, the State House Officer, Police Station: Durg, has stated that the petitioner is a hooligan and since 1995, he is regularly indulging himself in criminal activities in which he is involved in the offence of theft, beating, hooliganism, threatening the persons with dire consequences, keeping dangerous weapons like knife with him and threatening the people. Witness Ashish Kumar has stated that the petitioner abused his sister and when he tried to intervene, he started beating him and when his father came, the petitioner assaulted his father also, thereafter, when he was going to lodge report in the Police Station, the petitioner and his mother started beating him and threatened him with dire consequences.

9. Shiv Kumar Soni has stated in his evidence that on 15.06.2000 at 12 O' Clock in the night, some unknown person has pelted stone and he started abusing from his house only. Thereafter, on 16.06.2000 at 8 a.m. Shanti Tiwari (mother of the petitioner) & Ravi Tiwari (the petitioner), after coming out of their house started abusing and beating him and he received injuries on his tooth account of the beating. Shiv Kumar Soni has further stated that the petitioner entered the house of one Bhagwan Sharma and started beating Indu Bai, w/o Bhagwan Sharma. The residents of the vicinity reported the matter to the Police. On account of the terror of the petitioner, two persons have sold their shops and left the locality. Deokumar Janghel has stated that the petitioner is a man of quarrelsome nature, he is always indulged in quarrels and the people are terrified on account of the terror of the petitioner. The petitioner had assaulted one Marathi family with sickle and bite them with his tooth. M.R. Kashyap has stated that on 26.03.2003, the petitioner indulged in quarreling with his neighbours and had beaten them. Therefore, a complaint under

Sections 107 & 116 (3) of the Cr.P.C. was filed against the petitioner in the Court of Sub Divisional Magistrate, Durg.

10. In his reply the petitioner has mentioned that as far as cases of 1995 are concerned, he has been acquitted, but no copy of the judgment of acquittal has been filed by him. He has admitted that the case registered on 19.03.2003 is pending and the case which was registered on 19.02.2001 is also pending. In the present case, it is not like that the complaint was lodged against the petitioner on an old and stale matter. It is shown that Crime No.233/2003 was committed by the petitioner on 19.03.2003 and complaint under Sections 107 & 116 (3) of the Cr.P.C. was lodged against the petitioner on 26.03.2003. The record shows that in the years 1999, 2000 & 2001 also criminal cases were lodged against the petitioner.

11. Therefore, the order passed by the learned District Magistrate is based on the evidence of the persons who were effected and criminal cases which were lodged against the petitioner. The petitioner has not been able to establish that he has been falsely implicated and he is a peace loving person. As far as the defence evidence of the petitioner is concerned, the learned District Magistrate after considering the evidence disbelieved the same and defence witness Kum. Sharda Sharma is related to the petitioner. In this case, neither the principles of natural justice have been violated nor the procedure established by law has been violated. In the first instance, the learned District Magistrate satisfied himself with the allegations after examining the witnesses and perusing the record and thereafter, issued show cause notice to the petitioner for which reply was filed by him. After considering the defence evidence adduced by the petitioner, the learned District Magistrate reached the conclusion that the presence of the petitioner in the locality is danger to the life of persons and there will be disturbance of the public order because in view of the

activities of the petitioner his mere presence in the locality is hazardous to the community and its safety.

12. In the circumstances, for the foregoing reasons, I am of the view that the petitioner has not been able to make out a case in order to invoke the extraordinary jurisdiction under Article 226/227 of the Constitution of India for setting aside the impugned order passed by the District Magistrate and confirmed by the appellate authority. Therefore, I do not find any substance in this writ petition and the same is not worth admission. Accordingly, the writ petition is dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

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